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Independence of judges and lawyers

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, submitted in accordance with Human Rights Council resolution 26/7.

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Report of the Special Rapporteur on the independence of judges and lawyers

Summary

The present report addresses the need to consider and integrate into the post-2015 development framework the concept of the rule of law, including in particular two of its central elements: access to justice and the independence of the justice system. The report formulates responses to the shortcomings of the Millennium Development Goals, which were based on a narrow economic perspective of development, and highlights the unique opportunity of the international community to better address the intrinsic connection among the rule of law, human rights and development in the post-2015 agenda.

The Special Rapporteur first examines the Millennium Development Goals framework; then discusses the interrelatedness of the rule of law, justice and development; and, finally, presents her arguments for the integration of access to justice and the independence and impartiality of the justice system as elements essential to a successful post-2015 development framework. The report concludes with a series of recommendations.

In her report, the Special Rapporteur expresses her view that the rule of law and development are mutually reinforcing concepts and that the rule of law encompasses the following relevant aspects: the provision of access to fair and responsive justice systems capable of delivering effective remedies in the event of non-compliance with human rights; poverty reduction; transparency; accountability; and sustainability. Access to justice and the independence of the justice system are highlighted as key to breaking the cycle of poverty, exclusion and vulnerability, as well as to enabling populations to claim their human rights and to gain access to effective remedies for rights that have been violated. The Special Rapporteur emphasizes that it is imperative that human rights standards and obligations be mainstreamed throughout the post-2015 agenda.

The Special Rapporteur urges that access to justice and the consolidation of the independence of the justice system be reflected as goals in their own right in the new development framework. Fundamental aspects and elements of access to justice, the independence of the judiciary and the rule of law should also be considered in the development of the measurable targets and indicators that will accompany the new set of development goals.

I. Introduction

1. The present report is submitted in accordance with Human Rights Council resolution 26/7.

2. As momentum is growing for the incorporation of the concepts of the rule of law and access to justice into the post-2015 development framework, the Special Rapporteur decided to contribute to ongoing discussions by sharing her vision in this report — a vision that she has developed throughout her more than five years as a mandate holder.

3. The Millennium Development Goals, established through a constructive and participatory process, represented a unique effort to reduce extreme poverty and set a series of time-bound targets and indicators. However, it is now clear that despite a number of successful achievements, the development framework established by the Millennium Development Goals was too limited conceptually and lacked references to human rights, specifically in relation to important concepts such as justice and the rule of law. In hindsight, one can observe that this development framework was unwisely based on the notion of economic growth, which is too narrow to account fully for the human experience of development.

4. The international community has already started discussing how to address these shortcomings and build on the legacy of the Millennium Development Goals in the new development framework whose implementation should commence after 2015. Both the United Nations and civil society have been particularly involved in organizing a multitude of consultations, expert group meetings and high-level panels for the discussion of various aspects of the post-2015 development agenda. In this context, several Special Rapporteurs have emphasized not only in reports, but also in public statements, the importance of incorporating human rights and a human rights perspective into the post-2015 development framework.

5. Against this backdrop, the Special Rapporteur hopes that the present report will help to underline the importance of a fair, transparent and independent justice system that guarantees equal access to justice for all as a central feature of a more comprehensive development framework. Including access to justice in the post-2015 agenda will represent an important step towards breaking the vicious circle of poverty, exclusion and vulnerability, which impairs the enjoyment of several human rights.[1] Failing to acknowledge the role of the justice system, and the international legal obligations of the State attached thereto, will surely jeopardize the success of the post-2015 development agenda.

6. In the present report, the Special Rapporteur first examines the Millennium Development Goals framework (chap. III, sect. A), before she discusses the fundamental interrelatedness of the rule of law, justice and development (chap. III, sect. B). Finally, she presents her arguments for the integration of access to justice and the independence, impartiality, accountability and competence of the justice system into the post-2015 development framework as central elements (chap. III, sect. C), before concluding and putting forward specific recommendations (chaps. IV and V).

[1] A/67/278, para. 5.

II. Activities of the Special Rapporteur

7. The activities carried out by the Special Rapporteur from the issuance of her previous report to the General Assembly to 27 April 2014 are listed in her most recent report to the Human Rights Council (A/HRC/26/32). Since then, she has participated in the activities set out below.

8. From 27 April to 1 May 2014, the Special Rapporteur attended the sixty-third session of the General Assembly of the Latin American Federation of Judges and the annual meeting of the Ibero-American Group of the International Association of Judges, held in Santo Domingo. On that occasion, she delivered a statement on the current challenges to the independence of the judiciary and the importance of promoting capacity-building activities for judges and magistrates with regard to international human rights law.

9. On 8 and 9 May 2014, the Special Rapporteur participated in an international symposium on justice and the rule of law organized by the YükselKarkinKüçük Attorney Partnership in Istanbul, Turkey, during which she delivered a speech on the various forms of interference, pressures and attacks against the judiciary.

10. On 13 June 2014, the Special Rapporteur presented her annual thematic report to the Human Rights Council, which was focused on judicial accountability (A/HRC/26/32). She also presented her report on her official country visit to the Russian Federation (A/HRC/26/32/Add.1). In addition, the Special Rapporteur introduced the training manual on the application of international human rights law by judges and magistrates that she was preparing for the twenty-ninth session of the Human Rights Council, in 2015. In this context, she encouraged States to reply to the questionnaire she had sent in order to provide input that would inform the development of the manual.

11. In her statement before the Human Rights Council, the Special Rapporteur also reiterated her serious concerns about acts of reprisal against individuals and groups who cooperated or were seeking to cooperate with the United Nations human rights mechanisms, including those who met with Special Rapporteurs during official country visits or implemented decisions taken by human rights mechanisms. Echoing the Secretary-General, the United Nations High Commissioner for Human Rights and fellow Special Rapporteurs, she called on States to complete discussions on Council resolution 24/24 at the General Assembly to ensure that the appointment of the system-wide senior focal point for reprisals would be made as soon as possible.

12. During the Human Rights Council session, on 11 June 2014, the Special Rapporteur also participated as a panellist in a side event entitled "Strengthening the rule of law in Venezuela", organized by the International Commission of Jurists. At that event, she discussed the following themes: the various aspects of the internal and external independence of judges; judicial independence and the harmonization of case law; and the role of court presidents in safeguarding judicial independence.

13. On 18 June 2014, the Special Rapporteur participated in an event entitled "Independence of the judiciary: international standards and practice", organized by the Mission to Serbia of the Organization for Security and Cooperation in Europe, in Belgrade.

14. On 15 July 2014, the Special Rapporteur was the keynote speaker at a press conference on Cambodia's recent judicial law reforms organized by the International Bar Association's Human Rights Institute and held in Phnom Penh.

15. Moreover, since she last reported to the General Assembly, the Special Rapporteur has sent requests, and reminders of requests, for official visits to the Governments of Argentina, China, Egypt, Fiji, France, Germany, Greece, India, Iraq, Kenya, Nepal, the Philippines, Portugal, Spain, Tunisia, the United States of America and Venezuela (Bolivarian Republic of). She would like to thank the Governments of France, Germany, Greece, Iraq, Kenya, Morocco, Nepal, Portugal, Spain, Tunisia and the United States of America for inviting her to visit their countries.

III. Justice and the post-2015 development agenda

A. The Millennium Development Goals framework

16. The Millennium Declaration, adopted on 8 September 2000 by the General Assembly (resolution 55/2), set out, within a single consensus document, the ambitious commitments of Member States at the threshold of the new millennium in the areas of peace, security and disarmament; development and poverty eradication; the protection of the environment; human rights, democracy and good governance; and the protection of the vulnerable. On that occasion, heads of State and Government emphasized that the key challenge facing humanity was the need to ensure that globalization became a positive force for the world's population.

17. The Millennium Declaration had initially included clear references to the rule of law, justice and human rights. In particular, the heads of State and Government resolved to strengthen respect for the rule of law in international as in national affairs (para. 9) and declared that they would spare no effort to promote democracy and strengthen the rule of law, as well as respect for all internationally recognized human rights and fundamental freedoms, including the right to development (para. 24).

18. The Millennium Development Goals were established in 2001 on the basis of the Millennium Declaration as the development framework for the next 14 years and rapidly gained international and national support. The Goals were aimed at making the United Nations a more effective instrument for eradicating poverty and fostering development by focusing on the following limited priorities: eradicate extreme poverty and hunger (Goal 1); achieve universal primary education (Goal 2); promote gender equality and empower women (Goal 3); reduce child mortality (Goal 4); improve maternal health (Goal 5); combat HIV/AIDS, malaria and other diseases (Goal 6); ensure environmental sustainability (Goal 7); and develop a global partnership for development (Goal 8). For each Goal, targets and indicators were developed, providing clear indications of how the Goals would be attained and how to measure progress.

19. While some of the Millennium Development Goals reflected to some extent human rights belonging to the social and economic rights categories, they lacked wide-ranging references to existing international human rights standards. Indeed, references to issues related to justice, governance, accountability and the rule of

law, whose importance had been clearly emphasized in the Millennium Declaration, were notably absent from the final framework document. In particular, the Millennium Development Goals were silent on the devastating effects of conflict, violence, injustice and discrimination on development.

20. The Special Rapporteur wishes to stress that she does not reject the key role played by the Millennium Development Goals on a global scale. The Goals established a development framework in which clear targets and indicators were prescribed in a limited number and with the hope of maximizing effectiveness. In addition, the political consensus that surrounded the adoption of the Goals led to the unprecedented political impetus that catalysed efforts to realize them and assisted in tracking progress and successes over the past 13 years. Nevertheless, progress on some of the Goals masked growing disparities along lines of gender, geography, age, ethnicity, disability and socioeconomic status, among others things.[2]

21. In the opinion of the Special Rapporteur, the need for a true paradigm shift is evident, as the models of economic analysis that led to the adoption of the Millennium Development Goals development framework did not address issues related to inequalities and repression. Economic growth alone does not suffice to measure human development, because the concept of development encompasses much more than can be accounted for by economic indicators and benchmarks. People's demands for development are not limited to purely economic claims, but include claims of justice, non-discrimination and opportunities. Thus, it is evident that a comprehensive development model should take all these aspects into consideration.

22. The importance of including access to justice in the post-2015 development agenda is based precisely on the fact that access to justice constitutes a right that permits the fulfilment of other rights, be they civil, cultural, economic, political or social. Therefore, the new development framework must reflect the full range of international human rights, which means that it should include careful attention to the fair administration of justice. As reaffirmed by the Office of the United Nations High Commissioner for Human Rights, the universally agreed, and universally applicable, normative framework of human rights is more relevant than ever to the global challenges of development.[3]

23. The Special Rapporteur also strongly supports the position expressed by the Chairs of the United Nations human rights treaty bodies in a joint statement on the post-2015 development agenda in May 2013, in which they stated in particular that insufficient attention to the human rights principle of accountability and access to justice had undermined incentives to reach goals and foreclosed any remedy for people whose rights had been bypassed or abused in the development process.

24. In this context, efforts must be made to achieve higher levels of accountability. The human rights normative framework clearly identifies rights holders and duty bearers that have an obligation to respect, protect and fulfil human rights. A human-rights-based approach to the new development framework would ground the future development objectives in a universally accepted and adopted normative framework.

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[2] Centre for Economic and Social Rights, "A matter of justice: securing human rights in the post-2015 sustainable development agenda" (2013), p. 6.

[3] United Nations System Task Team on the Post-2015 United Nations Development Agenda, "Towards freedom from fear and want: human rights in the post-2015 agenda" (May 2012), p. 5.

25. The Special Rapporteur hopes that the recognition of the need for a new approach in the post-2015 development agenda will provide the necessary push for Member States to agree on a next set of sustainable development goals that will be more inclusive and focused on the interrelationship among the rule of law, human rights, justice and development.

B. The interconnectedness of the rule of law, justice and development

1. Rule of law: enabler and outcome of development

26. According to the Secretary-General, the rule of law can be defined as a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.[4]

27. In line with the Secretary-General's definition of the rule of law, the United Nations Office on Drugs and Crime (UNODC) explained that one should understand the rule of law as: a legal and political order based on the values of human rights where human security is guaranteed; an enabling condition for development through the provision of social order, security, and enforced rights and obligations; and a process by which development outcomes are achieved through clear systems to adopt rules, make decisions and deliver services that are essential for sustainable development, such as quality education.[5]

28. In this context, the Special Rapporteur has always emphasized that respect for the rule of law is fundamental in any functioning democracy and that the independence of the justice system has a central role to play as the institutional guardian of the enforcement of the rule of law. Equal access to justice and equality before the courts and tribunals are human rights that are essential aspects of the rule of law.

29. Yet, according to the Commission on Legal Empowerment of the Poor, 4 billion people around the world are robbed of the chance to better their lives and climb out of poverty, because they are excluded from the rule of law.[6] This situation is unacceptable.

30. As explained by the Commission, when the law works for everyone, it defines and enforces the rights and obligations of all. This allows people to interact with one another in an atmosphere that is certain and predictable. Thus, the rule of law is not a mere adornment to development; it is a vital source of progress.[7] The Commission leaves no doubt that in its opinion, the rule of law and poverty reduction, and thereby development, are interrelated to the point that there will be no sustainable progress in one area unless the other area is fully taken into account in all policies and measures.

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[4] S/2004/616, para. 6.

[5] UNODC, "Accounting for security and justice in the post-2015 development agenda" (October 2013), p. 8.

[6] Commission on Legal Empowerment of the Poor, "Making the law work for everyone", vol. I (2008), p. 1.

[7] Ibid., p. 3.

31. In a recent report, UNODC emphasized that the consequences of failure to implement the rule of law, such as fear of violence, corruption, a culture of impunity and lack of accountability, threatened the legitimacy of the social contract, undermined the rule of law and slowed, and perhaps reversed, development progress.[8]

32. In the opinion of the Special Rapporteur, the failure to consider essential aspects of the rule of law, such as justice and security, has had a tremendous negative impact on achievements related to the Millennium Development Goals. As noted by the Executive Director of the Open Society Justice Initiative, no low-income country experiencing armed conflict has achieved a single Millennium Development Goal. To the contrary, conflict-affected States — those, by definition, where the rule of law is lacking — count for disproportionately high percentages of the developing world's poor, uneducated and infant deaths. In advanced economies too, those portions of the population denied access to justice suffer from higher levels of discrimination in education and other public services.[9]

33. According to UNODC, there are pragmatic reasons to incorporate security and justice priorities into the post-2015 sustainable development framework. The Office adds that improvements in some aspects of security and justice are statistically correlated with corollary gains in key development areas. By way of comparison, the Commission on the Legal Empowerment of the Poor has shown how improvements in access to justice are also correlated with gains in access to key development sectors such as health, education, environmental sustainability and gender equality.[10]

34. In his report entitled "A life of dignity for all: accelerating progress towards the Millennium Development Goals and advancing the United Nations development agenda beyond 2015" (A/68/202), the Secretary-General, while noting the importance of transparency and accountability for ensuring citizens' involvement in policymaking, clearly acknowledged the interconnectedness among development, human rights and the rule of law. In paragraph 95 of the report, he went one step further by stating that legal empowerment, access to justice and an independent judiciary and universal legal identification could also be critical for gaining access to public services.

35. Adding its voice to the discussions, the Open Working Group of the General Assembly on Sustainable Development Goals,[11] in paragraph 144 of its 2014 progress report, concluded that good governance at all levels based on human rights, the rule of law, democracy, access to justice and to information, transparency and accountability, and peaceful and non-violent societies was an enabler of sustainable development.

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[8] UNODC, "Accounting for security and justice in the post-2015 development agenda", pp. 6 and 7.

[9] See James Goldston, "Why development needs the rule of law" (Open Society Justice Initiative, 4 April 2013).

[10] UNODC, "Accounting for security and justice in the post-2015 development agenda", pp. 18 and 19.

[11] Established in paragraph 248 of the outcome document of the United Nations Conference on Sustainable Development, entitled "The future we want" (General Assembly resolution 66/288, annex).

36. The Special Rapporteur is of the view that the rule of law and development are mutually reinforcing concepts. Indeed, the rule of law encompasses a variety of aspects related to development, including the provision of access to fair and responsive justice systems capable of delivering effective remedies in the event of non-compliance with human rights relevant to development goals.

37. In this context, the Special Rapporteur strongly believes that the promotion of justice and the consolidation of the rule of law provide the necessary tools for the fostering of more equitable, inclusive and sustainable development. The rule of law is both a facilitator and an outcome of development. Consequently, the contribution of the rule of law to sustainable development, poverty reduction and the security and empowerment of citizens cannot be overemphasized.

2. Corruption: a cross-cutting issue that undermines both the rule of law and development

38. The Special Rapporteur decided to make reference to the cross-cutting issue of corruption in order to illustrate her position concerning the centrality of the rule of law to the achievement of sustainable development.

39. References to corruption were left out of the Millennium Development Goals. This led the Chairs of the United Nations human rights treaty bodies to assert, in their May 2013 joint statement on the post-2015 development agenda, that special attention must be paid to tackling broader governance issues such as corruption. Yet, crimes constituting corruption and offences against integrity not only directly undermine the rule of law, the credibility of State institutions, and democracy, but also can have a significant and negative impact on both development processes and outcomes, thereby undermining social and economic development.[12]

40. The deleterious effects of corruption on economic and social development is an issue that cannot be tackled without addressing the phenomenon in a comprehensive manner, including its rule of law aspects. In particular, a judiciary of undisputed integrity is an essential institution for ensuring compliance with democracy and the rule of law.

41. Given that the judicial system serves to check other public institutions, a judiciary that is independent and not corruptible is fundamental in upholding the rule of law and human rights and monitoring the appropriate performance of public functions. At both the domestic and global levels, when other protections fail, the judiciary provides a bulwark to the public against any encroachments on rights and freedoms under the law (A/67/305, para. 14).

42. In particular, securing and strengthening the institutional independence of judges, prosecutors and lawyers is central for protecting these actors from external or internal pressures and interference and enabling them to discharge their professional duties with integrity, propriety and impartiality. Judges, prosecutors and lawyers should be confident that they can properly carry out their lawful functions without any kind of fear, harassment or intimidation in their professional lives (ibid., para. 96).

[12] For a more comprehensive analysis of judicial corruption and the role of the justice system in combating corruption, see A/67/305.

3. A comprehensive framework for access to justice in the post-2015 development agenda

43. As already highlighted, the definition of development should be broader than that on which the Millennium Development Goals were based. Development cannot be linked only to economic growth, but must encompass such concepts as justice, the rule of law, institutional quality, good governance, peace and security.

44. The Special Rapporteur is of the view that the rule of law offers both a conceptual framework and a range of tools that can help translate the rights discourse into concrete results, as adherence to some core rule of law principles can be practically measured. Building peace and effective governance based on the rule of law and sound institutions, in particular an independent judiciary, is essential in the post-2015 development agenda.

45. In addition, the Special Rapporteur agrees with the affirmation of UNODC that, notwithstanding the importance attached to peace and security during the United Nations Conference on Sustainable Development and consultations within and outside the United Nations since 2012, the development debate is relatively silent on issues related to the rule of law and in particular the place of security and justice in the post-2015 agenda, and that while the interconnections between security, justice, and development are accepted in principle at the highest levels, there are considerable disagreements about how they might be practically inserted into the process.[13]

46. The Special Rapporteur would like to call upon all Member States to make every effort to concretize their commitments in the form of a series of targets and indicators related to the rule of law, justice and human rights, to guide and complement development policies, goals and measures.

C. The importance of access to justice and the independence of the justice system in the post-2015 development framework

47. Access to justice, as defined by the United Nations Development Programme (UNDP), is the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards.[14] This definition, generally accepted by the international community, fills the gap left by international human rights treaties in which no specific definition of access to justice can be found. Several international and regional human rights instruments nonetheless address access to justice as a fundamental right that should be guaranteed to all individuals.

48. Access to justice is directly related to the principle of judicial independence, as the integrity, independence and impartiality of the judiciary are essential elements of an efficient and transparent justice system, that contributes to the protection of human rights and the fostering of economic development.[15]

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[13] UNODC, "Accounting for security and justice in the post-2015 development agenda", p. 7

[14] UNDP, *Programming for Justice: Access for All — A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice* (2005), p. 5.

[15] See UNDP, "Access to justice: practice note" (2004).

49. The independence of the justice system and access to justice are two of the central elements of the rule of law. While the Special Rapporteur will confine her analysis in the present section to those two elements, she would like to note that other important aspects of the rule of law, such as security, governance, decision-making and accountability, are fundamental and therefore should also be fully integrated into the post-2015 development agenda.

1. Access to justice: a right in itself and a means to enforce one's rights and entitlements

50. As clearly affirmed by the Special Rapporteur's predecessor, Leandro Despouy, access to justice constitutes both a fundamental human right in itself and the means of enforcing or restoring the exercise of rights that have been disregarded or violated (A/HRC/8/4, para. 17). Access to justice is therefore a human right fundamental to any democratic system aimed at guaranteeing the human rights of all in full equality. As a consequence, the lack of access to justice has serious consequences for the full enjoyment of human rights.

51. Access to justice thus permits the fulfilment of all human rights, because without it, people are unable to claim their rights or challenge crimes, abuses or violations committed against them, which in turn can trap them in a vicious circle of impunity, deprivation and exclusion.

52. As a consequence, access to justice is essential for development, because when members of vulnerable groups fall victim to human rights violations, they experience a widespread sense of unsafety and instability, which contributes to further poverty and underdevelopment. Fair and effective justice systems able to provide people with effective redress and adequate remedies constitute the most efficient way to ensure a sense of safety, stability and prosperity by reducing the risks associated with violence and abuses of rights and by deterring perpetrators from committing further violations.

53. In its broadest sense, the concept of access to justice involves not only access to the judicial system, but also access to other procedures and institutions that assist individuals to claim their rights and deal with State bodies, including national human rights commissions, ombudsmen or mediation institutions (A/62/207, para. 38).

54. Access to justice can be considered in terms of various complementary aspects: (a) access per se, i.e., the possibility to gain access to the justice system with adequate legal representation, which is fundamental for converting a problem into a judicial claim; (b) the availability of a well-functioning justice system, i.e., a system that allows for a fair judgement/decision within a reasonable time frame; and (c) the possibility to support the complete judicial process, meaning, for example, that persons involved should not have to abandon a judicial action during the trial for reasons beyond their control (in this regard, the system should provide the resources and instruments necessary to guarantee support throughout the judicial process).

55. As previously indicated, access to justice is closely linked to a series of rights widely recognized in international and regional human rights instruments. For example, the right to a fair trial implies, among other things, access to a predetermined and impartial court, whose decisions are based on law, following

proceedings that observe procedural guarantees. In turn, the right to an effective remedy strengthens the conditions of access to justice insofar as it includes effective procedural guarantees such as amparo or habeas corpus in the demands and requirements of a fair trial or the right to protection of the courts. Moreover, the right to equality before the courts prohibits any distinction regarding access to courts and tribunals that are not based on law and cannot be justified on objective and reasonable grounds. The concept of access to justice is also inextricably connected to the principle of equality of arms and the right to legal assistance, which must be prompt, confidential and free of charge when warranted, among other things (A/HRC/8/4, paras. 17-22).

56. As highlighted by the Special Rapporteur in a previous report (A/HRC/23/43 and Corr.1), the aim of legal aid is to contribute to the elimination of obstacles and barriers that impair or restrict access to justice by providing assistance to people who would otherwise be unable to afford legal representation and access to the court system. Accordingly, the definition of legal aid should be as broad as possible, including not only the right to free legal assistance in criminal proceedings, as defined in article 14.3 (d) of the International Covenant on Civil and Political Rights, but also the provision of effective legal assistance in any judicial or extrajudicial procedure aimed at determining rights and obligations, including civil rights.

57. Indeed, if access to justice is to preserve its essential universal nature and thus to function adequately and appropriately, it is necessary to establish a judicial system that guarantees rights and to take parallel measures, such as establishing mechanisms and programmes to facilitate free legal assistance in both criminal and civil cases. In this context, it is relevant to emphasize the paramount importance of ensuring that legal aid schemes are autonomous and independent so that they serve the interests of those who need financial support in order to have access to justice on an equal basis with others.

58. The Special Rapporteur notes the importance of acknowledging the comprehensive nature of access to justice. In this regard, the previous Special Rapporteur highlighted that, as a means of claiming the enjoyment or restoration of other rights (civil, political, economic, social and cultural), access to justice was not limited to ensuring admission to a court, but applied to the entire process, which must be conducted in conformity with the principles of the rule of law (including fair trial and procedural guarantees), right through to execution of the sentence. Thus, the principles of equality and the conditions of accessibility and effectiveness that must characterize any mechanism established to deal with disputes must be observed not only at the start of settlement proceedings, but throughout (A/HRC/8/4, para. 58).

59. Free and equal access to justice enables people to claim their rights, to testify to the crimes with which they have been confronted, and to extricate themselves from the vicious circle of impunity and exclusion. By providing an effective tool for breaking this vicious circle, access to justice allows for the empowerment of various segments of society on an equal basis. Empowering people to claim their rights is even more essential in contexts of widespread violations of human rights.

60. Various factors and circumstances impede appropriate and equal access to justice (ibid., paras. 24-32). The Special Rapporteur's predecessor noted that the lack of public policies to eliminate obstacles to access to justice had greater impact

on groups in a vulnerable situation or living in extreme poverty, or who were culturally, economically or socially disadvantaged (ibid., para. 48).

61. For example, financial barriers have a huge impact on access to justice. At the institutional level, they result in, inter alia, lack of training of judges and other operators of the justice system, difficult material conditions of work, and lack of funds for the financing of free legal aid. Institutional obstacles can also include problems relating to the excessive and arbitrary use of detention and incarceration, as well as corruption (A/67/278, paras. 48-50 and 57-59). At the individual level, court proceedings can represent a heavy financial burden, as can costs related to initiating and pursuing the proceedings, including lawyers' fees. Such financial barriers disproportionately affect those in low-income social sectors, in particular people living in extreme poverty.

62. Barriers relating to information also hamper access to justice. In addition, lack of knowledge of their fundamental rights, available remedies and procedures to follow to claim their rights, inter alia, directly affect people's access to justice.

63. Access to justice can be further undermined by cultural barriers, such as language difficulties, social stigma, socioeconomic subordination, lack of empowerment and mistrust in the justice system (ibid., paras. 20-27).

64. Furthermore, access to justice is too often hindered by physical barriers, which include, inter alia, geographical distance from courts or State institutions, such as the police, and facilities that are inadequate for groups with special needs, such as people with disabilities and elderly persons. The Special Rapporteur wishes to note that all of these barriers are further compounded in armed conflict or post-conflict situations, in which State institutions are often extremely fragile, if not non-existent.

65. In addition, particularly in relation to the poor and vulnerable, access to justice can be seriously undermined by legal and normative barriers, such as inadequate legal frameworks, lack of judicial review and lack of legal identity, and by structural problems, such as excessive delays in lawsuits and legal procedures, excessive formalism, lack of legal standing and limited impact of litigation. Furthermore, the use of informal justice systems by those for whom it is difficult to gain access to the justice system raises serious problems with regard to the enforcement of human rights (ibid., paras. 85-90).

66. As summarized by UNODC, aspects such as the accessibility, effectiveness, speed, and quality of services delivered by formal and informal justice systems have an impact on the extent to which "fair" justice is experienced. Those aspects represent areas in which goals, targets and indicators could be formulated.[16]

67. Like any other human right, access to justice requires that a system of guarantees be put in place so that its full exercise can be facilitated. As indicated above, these guarantees must include the legal and material conditions that will ensure equal access to justice for all. In order to establish these guarantees, simply refraining from creating obstacles is not sufficient; positive action is necessary, which includes the active removal of material obstacles to the effective exercise of the right to access to justice.

[16] UNODC, "Accounting for security and justice in the post-2015 development agenda", p. 16.

68. As already affirmed by the Special Rapporteur on extreme poverty and human rights, access to justice is crucial for tackling the root causes of poverty, exclusion and vulnerability (A/67/278, para. 5). The establishment of effective justice therefore contributes to the eradication of extreme poverty and hunger.

69. Improving access to justice also offers the hope of improving the lives of women through the establishment of effective means to enforce their rights. To support this argument, it was noted that efforts to provide women with access to justice had reduced illegal practices disproportionately affecting women, such as the payment of dowries.[17] As highlighted by the Special Rapporteur in a previous report, access to justice plays a crucial role in the effective protection of women's human rights, the empowerment and development of women and the advancement of gender equality (A/HRC/17/30 and Corr.1, para. 82).

70. Access to justice can also have a positive impact on the environment and environmental rights. Indeed, as noted by the organization Namati, access to legal help can assist communities to secure rights over common land, giving them more control over their livelihoods and greater incentive to preserve the environment.[18] In 1992, the link between access to justice and the environment was established in principle 10 of the Rio Declaration on Environment and Development, in which Member States recognized that environmental issues were best handled with the participation of all concerned citizens, at the relevant level, and that effective access to judicial and administrative proceedings, including redress and remedy, must be provided.

71. In addition to their obligation to create a legal framework that allows for the free exercise of human rights and fundamental freedoms, and to punish all violations of those rights, States must therefore provide to rights holders the necessary conditions for the exercise of the right to access to justice and oblige particular institutions to contribute in such provision. This includes an obligation to organize the Government and all the structures and institutions through which public power is exercised with a view to ensuring the free and full exercise of human rights, which can be claimed and enforced through a judicial remedy.

72. Guaranteeing de jure access to judicial and adjudicatory mechanisms is not sufficient to ensure that all individuals have de facto access to justice. States must thus take positive measures to ensure that laws and policies are substantively non-discriminatory, because situations in which an individual's attempts to gain access to the competent courts or tribunals are systematically frustrated de jure or de facto run counter to the guarantee of equality before the courts.[19]

73. In summary, access to justice means that anyone should know and be enabled to claim the protections and services due to him or her under the law.[20] Access to justice as an essential component of the rule of law is, consequently, paramount to the development and construction of sustainable development goals in the post-2015 development agenda.

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[17] See Namati, "Justice 2015: how justice impacts development" (Open Society Justice Initiative, March 2013).

[18] Ibid.

[19] CCPR/C/GC/32, para. 9, and A/67/278, para. 11.

[20] See George Soros, "Development's missing ingredient" (Open Society Justice Initiative, 4 February 2014).

74. Recently, in a background note on the high-level event of the General Assembly on the contributions of human rights and the rule of law in the post-2015 development agenda, the President of the General Assembly reiterated that ensuring that all people could gain access to expeditious, transparent, effective, fair, responsive, participatory and accountable justice systems (including informal or customary systems of justice) allowed for the peaceful resolution of disputes and provided effective remedies for grievances and claims in a fair and independent manner. This provided the social stability conducive to sustainable development. At the same time, the independence of the judicial system, together with its impartiality and integrity, was an essential prerequisite for upholding the rule of law.

2. Strengthening the independence, impartiality, integrity and competence of the justice system[21]

75. The independence of the judiciary has been defined as international custom and a general principle of law recognized by the international community.[22] It also constitutes a treaty-based obligation, as shown by the requirement of an "independent tribunal" established in article 14, paragraph 1, of the International Covenant on Civil and Political Rights, which, as asserted by the Human Rights Committee, is an absolute right that is not subject to any exception (CCPR/C/GC/32, para. 19). Moreover, as enshrined in the Bangalore Principles of Judicial Conduct, judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial.

76. The importance of the independence of judges has also been underlined by the Human Rights Committee in its interpretation of the content and scope of article 14 of the International Covenant on Civil and Political Rights. According to the Committee, the requirement of competence, independence and impartiality of a tribunal in the sense of article 14, paragraph 1, is an absolute right that is not subject to any exception (ibid.).

77. Without independence of the judiciary, there is no separation of powers, and without separation of powers there can be no genuine rule of law or democracy. The importance of the principles of the separation of powers and the rule of law was affirmed by the Special Rapporteur's predecessor when he noted that it was the separation of powers, together with the rule of law, that opened the way to an administration of justice that provided guarantees of independence, impartiality and transparency.[23] As pointed out by the Human Rights Committee in its general comment No. 32, a situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal (CCPR/C/GC/32, para. 19).

78. When the administration of justice fails, impunity takes over and the consequences can be dramatic. Impunity undermines democracy, the rule of law, people's trust in State institutions, and opportunities for development. Furthermore, weak judicial systems that fail to guarantee access to justice for all lead to situations

[21] For a more comprehensive analysis of the guarantees of judicial independence, see A/HRC/11/41.

[22] In the sense of article 38.1 (b) of the Statute of the International Court of Justice.

[23] A/HRC/11/41, para. 18; see also E/CN.4/2004/60, para. 28.

in which the most marginalized groups of the population are excluded from the judicial system, which places them in a position of need rather than empowerment.

79. Factors and circumstances that affect the independence of the judiciary are numerous and diverse and encompass both individual and institutional dimensions. Guarantees need to be put in place to address all of these elements in a comprehensive way, in order to strengthen judicial independence and thereby ensure the proper functioning of the judiciary.

80. Above all, the independence of the judiciary should be legally guaranteed at the highest level, where possible in the Constitution. Other institutional guarantees that need to be set up to ensure the independence of the judiciary include: (a) transparent selection and appointment procedures for judges and magistrates, including clear and objective criteria based on competence, integrity and merit; (b) the principle of the natural or lawful judge, which prohibits ex post facto tribunals and limits the use of special courts and military courts; (c) a sufficient budget for the judiciary, which must provide for adequate resources to enable the justice system to perform its functions properly; (d) freedom of association and expression for judges and magistrates, in particular allowing their participation in debates concerning their functions and status, as well as legal issues; (e) the assignment of court cases, which must be transparent and objective in order to prevent interference from outside and within the judiciary; (f) internal independence, which must provide for transparent procedures for the appointment of court Chairs; and (g) the availability of disciplinary proceedings, which must respect principles of fair trial and due process at the same time as it reinforces the accountability of judges and magistrates.

81. Regarding the individual dimension of independence and impartiality, the safeguards should include the guaranteed tenure and non-removability of judges; personal immunity for certain acts or omissions in the exercise of their judicial functions, which must be clearly established in legislation and the code of conduct; promotions based on objective factors; and adequate conditions of service, including salaries, human and material resources, security, and training and capacity-building.

82. As members of the judiciary, judges have an obligation and responsibility under international law to ensure that substantive rights are enjoyed without discrimination of any kind, such as on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, in order to protect and enforce human rights for all equally. As the Special Rapporteur has previously noted, this entails a proactive duty to ensure that the judges are upholding international equality and non-discrimination standards in both case deliberations and the application of court procedures. Judges can recommend the repeal or amendment of a law or rule if inconsistent with international human rights standards (A/66/289, para. 38).

83. In this regard, all the actors of the justice system need to be adequately educated and trained so that the system can be truly independent and play a transformative role in promoting and protecting human rights in a fair and transparent manner, with due regard to States' international obligations and commitments, instead of perpetuating entrenched discriminatory patterns by strictly applying unfair and unequal laws.

3. Establishing goals, targets and indicators encompassing the elements guaranteeing access to justice and an independent justice system

84. The Special Rapporteur disagrees with the simplistic argument that "justice cannot be measured". She believes that human rights law sets out measurable standards of conduct and operational principles that enable justice to be assessed.

85. As underlined in a worldwide appeal to the States Members of the United Nations, there are practical ways to measure progress towards justice, and Governments are making great strides in doing so. Ministries of justice already gather data on case volume and duration. National statistics offices often include legal knowledge and legal access in their surveys.[24]

86. Indeed, Governments and judiciaries have long used indicators and other measures to monitor and assess the functioning of the justice system and the courts. In addition, United Nations agencies have developed many series of indicators[25] relating to the measurement of progress in the functioning of the justice system, in particular with regard to the criminal justice system or access to justice.

87. Several methodological tools are available to assist in measuring progress in the area of the rule of law. These tools should provide guidance with respect to which indicators should be chosen, and should include administrative data, legal needs studies, perception surveys, expert surveys and qualitative research.[26]

88. Specifically in relation to access to justice and judicial independence, goal-setting should reflect the fact that these concepts are both ends in themselves and means to enforce other human rights and entitlements. Both qualitative and quantitative indicators should be developed so that both means and outcomes can be measured. It is also urgent to recognize the importance of processes, because, as noted by Peter Chapman of the Open Society Justice Initiative, it is often the process by which national priorities are developed that ultimately determines their success.[27]

89. Recalling the Brasilia Regulations regarding Access to Justice for Vulnerable People, the Special Rapporteur wishes to underscore that the judicial system must be designed, and indeed is being designed, as an instrument for the effective defence of the rights of vulnerable people. In this endeavour, making efforts to disaggregate the data and material used to inform indicators and measures and assess progress towards the targets set by gender, ethnicity or race, and economic status or other relevant categories, will go a long way in helping Governments to focus development efforts on those who need them most.

90. Furthermore, given that the judiciary must be independent and impartial, and must also appear to be independent and impartial to a reasonable observer, there is a need to account for the reality lived by people who engage with the justice system

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[24] See "Appeal to the Member States of the United Nations: justice should be included in the post-2015 development goals", available at www.namati.org/justice2015.

[25] For example, the rule of law indicators prepared under the auspices of UNODC that elaborated 135 separate metrics to measure progress in the different aspects of the rule of law; or the human rights indicators developed and promoted by the Office of the United Nations High Commissioner for Human Rights.

[26] See Peter Chapman, "Function, not form: defining targets for justice in the post-2015 development agenda" (Open Society Justice Initiative, 7 November 2013).

[27] Ibid.

when designing targets and indicators. Indeed, only by understanding the concrete experiences of people who use the justice system or have tried to gain access to it will it be possible to find the specific solutions that will improve access to justice for all and without discrimination, de jure or de facto.

91. It is important to highlight that while universal goals ensure a unified purpose, targets and indicators need to reflect national and local conditions, priorities, capacities and resource limitations.[28]

92. Throughout her mandate, the Special Rapporteur has continuously underlined that no ideal justice system exists; rather, there are universal principles that must be respected in the structure and functioning of any judicial system, so that it can duly fulfil its purposes.

93. Thus, while the universality of human rights and the rule of law should be placed at its centre, thereby establishing a valuable common ground for all, the new development framework should support contextually relevant strategies. Against this background, the process of designing, adopting and implementing necessary reforms will certainly be perceived as just as important as their content.

94. Indeed, a development agenda based on the rule of law and justice allows for the necessary monitoring and accountability mechanisms to be put in place so that people can claim their rights and gain access to effective remedies when their rights have been violated or neglected.

95. In this context, access to justice and strengthening the independence of the justice system should be goals in their own right, reflecting the many commitments made by the international community and referred to in the present report. Fundamental aspects and elements of access to justice, the independence of the judiciary and the rule of law should also be integrated into concrete and measurable targets.

96. Many targets and indicators relating to the rule of law, access to justice and the independence of the judiciary have already been suggested. Indicators are important as markers for evaluating results. According to the United Nations, it is possible to measure access to justice quantitatively and qualitatively. For example, in assessing whether the judicial system offers access to criminal justice, the following elements can be used to develop indicators: the availability of interpreters, the protection of the rights of defendants and victims, access to redress for miscarriage of justice, fees to obtain access to courts, the availability of free legal assistance for indigent defendants, the quality of legal representation, and response to gender-based violence.[29] According to UNDP, access to justice can be measured through the development of such indicators as the accessibility of court processes; the availability of adequate legal representation; access to more informal legal processes, such as small claims courts and administrative tribunals; the availability of legal advice; and public legal education.[30]

97. For example, in its 2013 report entitled "A new global partnership: eradicate poverty and transform economies through sustainable development", the High-level

[28] UNODC, "Accounting for security and justice in the post-2015 development agenda", p. 43.

[29] See *The United Nations Rule of Law Indicators: Implementation Guide and Project Tools* (2011).

[30] See UNDP, "Access to justice: practice note".

Panel of Eminent Persons on the Post-2015 Development Agenda proposed targets addressing, inter alia, legal identity, the reduction of violent deaths and accessible, independent and well-resourced institutions. In turn, the international non-governmental organization Namati recommended legal identity and accessible systems of dispute resolution as targets. Saferworld also laid out a host of targets and indicators.[31]

98. The Special Rapporteur wishes to reiterate that more attention and more resources aimed at making justice systems more effective and transparent are needed in order to ensure equal access to justice for all.

IV. Conclusions

99. **It is undeniable that there exists a direct and intrinsic connection between sustainable development and the rule of law and human rights, including access to justice and the independence of the justice system.**

100. **In this context, the Special Rapporteur would like to recall that, in 1993 at the World Conference on Human Rights in Vienna, States acknowledged that the administration of justice, including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, are essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development.**[32]

101. **Thus, not only should the issues relating to access to justice and justice administration feature high on the development agenda, but they should also be explicitly included in the practical development framework that will be set up to continue and complement the legacy of the Millennium Development Goals. This is essential to help break the vicious circle of poverty, exclusion and vulnerability. The central role that a well-functioning, independent, impartial, transparent and competent justice system can play in enabling people to claim their human rights or gain access to an effective remedy when their human rights have been violated should also be highlighted in the post-2015 development agenda.**

102. **A human-rights-based approach to development is necessary to place human beings back at the centre of the process of development, defining rights holders and duty bearers, and advance the fundamental and cross-cutting human rights principles of participation, accountability, non-discrimination, empowerment and the rule of law, all of which are essential for achieving sustainable development without leaving anyone behind. As a result, it is imperative that human rights standards and obligations be mainstreamed throughout the post-2015 development agenda.**

103. **The universality of human rights makes a compelling case for the inclusion of the concept of access to justice and the fair administration of**

[31] See Peter Chapman, "Function, not form: defining targets for justice in the post-2015 development agenda".

[32] Vienna Declaration and Programme of Action, para. 27.

justice in the post-2015 development framework. In this regard, indicators have been developed at the international and national levels to track progress in achieving human rights for all, including rights related to the justice system. In particular, indicators to measure the performance of the justice system and public satisfaction therewith have already been developed. These indicators could be assessed and adapted in order to be reflected in the future development practical framework.

104. **The Special Rapporteur wishes to conclude with a question raised by James Goldston before the General Assembly on 10 June 2014: what role will justice play in the next generation of development goals?[33] While it is now recognized that the rule of law and human rights are necessary preconditions for peaceful, stable and prosperous societies, justice will play the role that Member States will be willing to let it play. The final message is therefore very simple: development needs justice, and that need can be concretized only if Member States take up their responsibilities.**

V. Recommendations

105. **The following recommendations should be considered in conjunction with, and bearing in mind, ongoing discussions regarding the incorporation of human rights concepts, such as justice and the rule of law, into the post-2015 development framework. The Special Rapporteur echoes the Open Society Justice Initiative in recognizing that the international community currently has a unique opportunity to close the gap between the rights and development worlds, and it is through this lens that the following recommendations should be considered.**

106. **In formulating the post-2015 development framework, special attention should be paid to the absence of many human rights issues in the Millennium Development Goals. Specifically, States must learn from the silence of the Goals regarding the destructive effects of conflict, violence, injustice and discrimination on development. In this context, the Special Rapporteur urges all States to consider the explicit inclusion of human rights concerns in the post-2015 development framework.**

107. **The Special Rapporteur reiterates that a predominantly economic perspective on development does not address the demands of development, such as justice, non-discrimination and opportunity, and urges that the post-2015 development framework include the full range of international civil, cultural, economic, political and social rights, including in the form of goals, targets and indicators.**

108. **States should seek to incorporate the universally accepted and adopted human-rights-based approach into the post-2015 development framework, with a preliminary emphasis on ensuring access to justice and the independence and integrity of the judiciary. Specific targets and indicators should be dedicated to access to justice and the independence of the judiciary.**

[33] See James Goldston, "Justice for development: integrating justice and human rights into the post-2015 development framework" (Open Society Justice Initiative, 10 June 2014).

109. The Special Rapporteur urges States to proactively remove material obstacles to gaining access to justice and to take positive measures to ensure that laws and policies are non-discriminatory, thereby tackling the root causes of poverty, exclusion and vulnerability, all of which, in addition to being unacceptable in a democracy, negatively affect development.

110. The Special Rapporteur calls on States to pay particular attention to governance issues, specifically issues of corruption, as they threaten public legitimacy, undermine the rule of law and have a negative impact on development progress.

111. States should make every effort to concretize their commitments to incorporating references to the rule of law and justice into the post-2015 development framework, by formulating stand-alone goals accompanied by both qualitative and quantitative targets and indicators, as well as mainstreaming references to the rule of law and justice into targets and indicators related to other goals. In this regard, States should use administrative data, legal needs studies, perception surveys, expert surveys and qualitative research to guide their selection of both qualitative and quantitative indicators.